IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5338 OF 2007

Dr.Ranjana Yamaji Abhang ...Petitioner
V/s.
Maharashtra Education Society, Pune
& Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 6006 OF 2007

Dr.Vishwas Dattatrey Gogate ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 6552 OF 2007

Dr.Mrs.Vasudha Anil Kulkarni ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 6563 OF 2007

Dr.Nathan Malachi Aston & Ors. ...Petitioners
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 6564 OF 2007

Dr.Mrs.Snehala Prafullchandra Tawde ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 6566 OF 2007

Prof.Vaman Bhaurao Joshi ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 6761 OF 2007

Mrs.Pratibha Vinayak Barve ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 6914 OF 2007

Prof.Narayan Vishnu Chaudhari ...Petitioner
V/s.
Janata Shikshan Sanstha, Wai & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 7505 OF 2007

Smt.Uma Sadashiv Palkar ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 7511 OF 2007

Mrs.Sunanda Jayant Atre ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 7654 OF 2007

Dr.Hoshang Eruch Master ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

ALONGWITH

WRIT PETITION NO. 7659 OF 2007

Dr.Sureshchandra Jagdishmitr Gupta ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

Appearance :-

Mr.A.V. Anturkar i/b. Mr.V.H. Kulkarni for Petitioner in all the writ petitions except Writ Petition No.6914/2007.

Mr.V.A. Sonpal, AGP for the State.

Ms.Anjali Helekar for Respondent Nos.1 and 2 in Writ Petition No.5338/2007.

Mr.A.G. Kothari for Respondent No.2 in Writ Petition No.7654/2007.

Mr.B.V. Phadnis for University in Writ Petition Nos.7654/2007 and 7659/2007.

Ms.Nandini Menon for Respondent Nos.2 to 4 in Writ Petition No.7505/2007.

Mr.G.H. Keluskar for Petitioner in Writ Petition No.6914/2007.

Mr.A.H. Solkar, AGP for State in Writ Petition No.6914/2007.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : NOVEMBER 28, 2007

P.C. :-

1. The question that arises for consideration in these petitions is the same viz. whether Government Resolution issued by the Government of Maharashtra dated 11th December, 1999 laying down 60 years as the age of retirement for teachers working under the University and colleges affiliated to the University in the State of Maharashtra is valid ?

2. The petitioners in Writ Petition Nos.5338/2007, 6006/2007, 6552/2007, 6563/2007, 6564/2007, 6566/2007, 7505/2007, 7511/2007 are teachers working in colleges affiliated to the Pune University. The petitioner in Writ Petition No.6914/2007 is working in a college affiliated to the Shivaji University and the petitioners in Writ Petition Nos.6761/2007, 7654/2007 and 7659/2007 are teachers working in colleges affiliated to the Mumbai University. All these petitioners have approached the Court challenging the Government Resolution issued by the Government of Maharashtra dated 11th December, 1999 in so far as it fixes the age of retirement of teachers working in affiliated colleges at 60 years. The case of the petitioners is that they are teachers working in colleges affiliated to above-referred Universities in the State of Maharashtra. Relying on the Circular dated 24th December, 1998 issued by the University Grants Commission (UGC), they claim that in view of that Circular, their age of retirement should be 62 years.

3. It is submitted by the petitioners that the Government of India had issued a letter dated 27th July, 1998 directing all the State Government to adopt the conditions of service which were prescribed in the letter dated 27th July, 1998 in relation to the teachers working under various Universities in the States. According to the petitioners as per letter dated 27th July, 1998, the age of retirement of teachers should be 62 years. It is submitted that the pay scales recommended by the Fifth Pay Commission have been made applicable by the State Government as per Government Resolution dated 27th February, 1989. It is submitted that the package put forth by the Government of India has been accepted by the State Government in its entirety and therefore, the Government Resolution dated 11th December, 1999 prescribing the age of retirement as 60 years for teachers, is illegal. Thus, according to the petitioners, as the retirement age laid down by the University Grants Commission and the Government of India in relation to the teachers working under various Universities and colleges affiliated to the University is 62 years, the Government of Maharashtra could not

have by the Government Resolution dated 11th December, 1999 prescribed a lower age of retirement. The petitioners also relied on a judgment of the Supreme Court in the case of **State of Maharashtra and others V/s. Association of Maharashtra Education Service Class II Officers and others, reported in (1974() 4 SCC 706.**

4. According to the respondents, however, the age of retirement laid down by the University Grants Commission and the Government of India as 62 years for teachers does not by its own force apply to the teachers working under various Universities and colleges affiliated to the Universities in the State of Maharashtra unless and until it is accepted by the Government of Maharashtra. It is submitted that power to fix the age of retirement of teachers working in various Universities in the State of Maharashtra and colleges affiliated to the Universities is with the State Government and therefore, the State Government has power to fix the age of retirement even if the age of retirement is different than the age of retirement which is recommended by UGC and Government of India. On

behalf of the respondent, reliance is placed on a Judgment of the Supreme Court in the case of **T.P. George and others V/s. State of Kerala and others, reported in 1992 Supp (3) SCC 191.** The respondents also rely on a judgment of the Supreme Court in the case of **B. Bharat Kumar and Others V/s. Osmania University & Others, reported in CDJ 2007 SC 557.**

5. Now it is common ground that the petitioners are working as teachers in colleges affiliated to Pune, Mumbai or Shivaji University. All the three Universities are constituted under the Maharashtra Universities Act, 1994. Perusal of Section 5(49) of the Maharashtra Universities Act shows that the University has the power to lay down, for teachers and University teachers, the conditions of service. The relevant provision reads as under :-

> "5. The University shall have the following powers and duties, namely :-
>
> (49) to lay down for teachers and university teachers, service conditions including code of conduct, workload, norms of performance appraisal, and such other instructions or

> directions as, in the opinion of the university, may be necessary in academic matters;"

Thus power is conferred on the University to prescribe conditions of service of teachers. The term "teacher" is defined in Section 2(34) which reads as under :-

> 2(34) "teacher" means full-time approved professor, associate professor, assistant professor, reader, lecturer, librarian, principal, deputy or assistant librarian and documentation officer in the university and college librarian, Director or instructor of physical education in any university department, conducted, affiliated or autonomous college, autonomous institution or department or recognised institution in the university;

6. Perusal of the above definition shows that the teacher working in a college affiliated to University will be a teacher within the meaning of Act. Thus, the conditions of service of teachers working in affiliated colleges can be prescribed by the University. Subsection 3 of Section 8 confers on the State Government power to frame Standard Code laying down the conditions of service of the teachers working under the Universities as also the teachers working in affiliated

colleges. Subsection 3 of Section 8 reads as under :-

> "8(3) The State Government may in accordance with the provisions contained in this Act, for the purpose of securing and maintaining uniform standards, by notification in the Official Gazette, prescribe a Standard Code providing for the classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus, reservation of posts in favour of members of the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes and Other Backward Classes, duties, workload, pay, allowances post retirement benefits, other benefits, conduct and disciplinary matters and other conditions of service of the officers, teachers and other employees of the universities and the teachers and other employees in the affiliated colleges and recognised institutions (other than those managed and maintained by the State Government, Central Government and the local authorities). When such Code is prescribed, the provisions made in the Code shall prevail, and the provisions made in the Statutes, Ordinances, Regulations and Rules made under this Act, for matters included in the Code shall, to the extent to which they are inconsistent with the provisions of the Code, be invalid."

7. Perusal of the provisions of Section 51 of the Maharashtra Universities Act shows that the University can frame a statute laying down the conditions of service of the teachers. Perusal of Section 81 of the Universities Act shows that it is one of the conditions

of grant of affiliation and recognition by the University that the conditions of service of teachers working in said affiliated colleges shall be such as may be prescribed by the University. Perusal of these various provisions of the Act thus show that the power to lay down conditions of service of teachers under the University and in colleges affiliated to the University constituted under the Maharashtra Universities Act is vested in the University as also in the State Government. Therefore, so far as the Maharashtra Universities Act is concerned, the State Government is competent to lay down the conditions of service of teachers working in the Universities and the affiliated colleges. The age of superannuation or retirement is definitely a conditions of service and therefore, the competence of the State Government to prescribe age of retirement can not be denied.

8. It appears that after appointment of the Fifth Pay Commission in relation to the employees of the Central Government, the University Grants Commission appointed a Committee under the Chairmanship of Shri

Rastogi to examine the present structure of emoluments and to make suitable recommendations to the University Grants Commission in relation to the conditions of service of teachers in University and colleges. It appears that the report submitted by Shri Rastogi was accepted by the UGC and the UGC made recommendations to the Central Government. The Central Government accepted those recommendations and implemented them in relation to the Central University and Colleges. It is thereafter that the Central Government addressed a letter dated 27th July, 1998 to the various State Governments. The subject of that letter was "Revision of Pay scales of teachers in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of Fifth Central pay commission". In the letter, it was stated that in discharging its constitutional responsibility, the Central Government had decided to provide financial assistance to the State Government who wish to adopt and implement the scheme of revisions of pay scales subject to the terms and conditions mentioned in that letter. It is thus clear that the scheme for revision of pay

scales propounded by the Central Government did not apply to the teachers working under the University under the State Governments by its own force. It needed to be adopted by the concerned State Government. The consequence of adoption of the scheme was that the State Government became entitled to financial assistance from the Central Government for the period from 1.1.96 to 31.3.2000. The Government of Maharashtra decided to adopt the scheme propounded by the Central Government and for that purpose, issued Government Resolution dated 11th December, 1999. Paragraph 1 of the Government Resolution reads as under :-

> "Government of Maharashtra had approved the implementation of revised pay scales for University and College teachers with effect from 1st January, 1986 vide Government Resolution, Education and Employment Department No.NGC 1286/(1224)/UNI.4, dated 27th February, 1989. After appointment of the Fifty Pay Commission for Central Government employees, the University Grants Commission had appointed a Committee under Chairmanship of Prof.Rastogi to examine the present structure of emoluments and conditions of service of University and College teachers. After considering the Rastogi Committee's Report, the University Grants Commission submitted its recommendations to the Government of India. After examination of this report, Government of India evolved a scheme of

> pay revision for the University and College Teachers and other measures for improvement of standards in higher education. By their letter dated 27th July, 1998 and subsequent letters dated 22nd September, 1998 and 6th November, 1998, the Government of India accepted and approved the recommendations of UGC to Central Universities and Colleges thereunder. Similarly, the Government of India recommended to the State Government to implement this scheme in the State Universities and affiliated Colleges. The question of implementing Government of India's scheme of revision of pay scales of University and College teachers and other relevant quidelines and notifications issued by U.G.C. from time to time was under consideration of the State Government. After careful consideration of the Government of India's Package Scheme, 1996 for maintenance of standards in Higher Education, the State Government has now decided to implement the revised pay scales and the terms and conditions of service as detailed below."

9. Perusal of the abovequoted paragraph from the Government Resolution dated 11th December, 1999 shows that the decision of the State Government to implement the Government of India's Package Scheme of 1996 was on the terms and conditions mentioned in the Government Resolution.

10. It was submitted on behalf of the petitioners that as per the letter from the Government of India, the

State Government was under obligation to accept the scheme as it is and it had no power to make any modification in the scheme. It was submitted that the scheme propounded for by the Government of India contemplated that the age of retirement of teachers would be 62 years whereas by the Government Resolution dated 11th December, 1999, the age of retirement provided is 60 years. The relevant clause is Clause 22 in the Government Resolution. It reads as under :-

> "Superannuation and re-employment:
>
> . The age of superannuation of teachers shall be 60 years and thereafter no extension in service shall be given. However, it may be open to a University or a College to re-employ a superannuated teacher according to the existing guidelines framed by the University Grants Commission, upto the age of 65 years. However, salary expenditure for such re-employed period beyond 60 years of age shall not be held admissible for purposes of grant-in-aid. The age of superannuation of teachers in Government Colleges and Institutes of Science shall, however, continue to be 60 years subject to the conditions laid down under Government Resolution NO.SCT-1089/68588/(4672)/ADM-2, dated 20.12.90.
>
> . Age of superannuation of Registrars, Librarians, Physical Education personnel, who are being treated at par with the teachers will be 60 years. No re-employment facility is recommended for the Registrars, Librarians and

> Directors of Physical Education. The persons appointed to the post of Registrar other than teachers will be retired at the age of 58 years."

11. It was submitted that the Government of Maharashtra, while adopting the package scheme of the Central Government of India, could not have made departure in relation to the age of retirement. In this regard, it is to be noted that it is common ground that after the Government of Maharashtra issued the Resolution dated 11th December, 1999, the central assistance was extended to the Government of Maharashtra. It is thus clear that the Central Government and the UGC accepted that the adoption of the scheme done by the Government of Maharashtra under the Government Resolution dated 11th December, 1999 was proper. The question whether the UGC scheme is mandatory or the State Government has power to accept the scheme with modification appears to have been considered by the Supreme Court in its judgment in the case of **T.P. George and others (supra)**. The Supreme Court in that case was considering the 1986 Package Scheme in relation to the University teachers. It is

paragraph 3 and 4 of that judgment, in our opinion, is relevant. It reads as under :-

> "3. We are in agreement with the observations of the Division Bench of the Kerala High Court in Writ Appeal No.223 of 1991 quoted in the impugned judgment which run as follows :
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> . Though Clause 26 of the scheme provides that the age of superannuation for teachers should be 60 years, and the scheme contemplates certain improvements in providing for assistance in that behalf, it is not a scheme which is statutorily binding either on the State Government or the different Universities functioning under the relevant statutes in the State of Kerala. What the State Government has done by its order dated March 13, 1990 is to implement the UGC Scheme including revision of scales of pay in relation to teachers in Universities including Kerala - Agricultural University, affiliated colleges, Law Colleges, Engineering Colleges and qualified Librarians and qualified Physical Education Teachers with effect from January 1, 1986, subject however to the express condition insofar as the age of retirement is concerned, the present fixation of 55 years shall continue. The contention of the appellant is that the State Government having accepted the UGC Scheme, and as the scheme provides for a higher age of 60 years, once the State Government accepted the scheme, all the clauses of the scheme became applicable. It is not possible to accede to this contention. Firstly, as already stated the UGC Scheme does not became applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same. Therefore the State Government had the discretion either to accept or not to accept the

scheme. In its discretion it has decided to accept the scheme, subject to the one condition, namely, insofar as the age of superannuation is concerned, they will not accept the fixation of higher age provided in the scheme. The State Government having thus accepted the scheme in the modified form, teachers can only get the benefit which flows from the scheme to the extent to which it has been accepted by the State Government and the concerned Universities. The appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation. That is a matter between the State Government on the one hand and the University Grants Commission on the other, which was provided certain benefits by the scheme. It is for the University Grants Commission to extend the benefit of the scheme or not to extend the benefit of the scheme, depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other. Teachers of the private institution concerned are governed by the statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years."

4. We may clarify the scheme referred to as UGC (University Grants Commission) Scheme of 1986, framed by the Government pursuant to the Malhotra Committee's Reports. We may further point out that it is clear from paragraph 4 of the circular dated June 17, 1987, addressed by the Ministry of Human Resources Development,

> Department of Education, to the Education Secretary of all States/UTs (Union Territories) that the adoption of the scheme was voluntary, and the only result which might follow from the State Government not adopting the scheme might be that it may not get the benefit of the offer of reimbursement from the Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay scales as recommended by the scheme."

12. Perusal of the observations of the Supreme Court in the judgment quoted above makes it clear that the State Government had an option to accept the scheme propounded by the UGC in modified form and in so far as the prescription of age of retirement is concerned, power vests solely with the State Government of prescribing a different age of retirement than the one which is mentioned in the scheme. We further find that a question identical to the one which is raised in this petition has been considered by the Supreme Court in its judgment in the case of **B. Bharat Kumar** referred to above. Perusal of that judgment shows that in that case, the Supreme Court was considering the letter of the Central Government dated 27th July, 1998 which is relied on in these petitions also. The Supreme Court

was considering identical controversy raised in relation to the teachers working in the Universities in the State of Andhra Pradesh. It appears that the Government of Andhra Pradesh also while accepting the UGC scheme had prescribed the age of retirement as 60 years as has been done by the Government of Maharashtra and the Andhra Pradesh High Court relying on the judgment of the Supreme Court in the case of **T.P. George** referred to above, dismissed the petitions challenging the prescription of different age of retirement by the Government of Andhra Pradesh than the one which is provided in the UGC scheme. The Supreme Court has upheld the decision of the Andhra Pradesh High Court. The observations of the Supreme Court in para 12, 13 and 14 in its judgment in the case of **B. Bharatkumar** (supra), in our opinion, are relevant which read as under :-

> "12. We would, therefore, first examine as to whether the two Division Benches have rightly relied upon the said judgment held against the appellants. We have examined the judgment in extenso. This is also a case where the UGC had floated a scheme in 1986 which was framed by the Central Government pursuant to the Mehrotra

Committee Report. In that scheme there was a Circular dated 17.6.1987 addressed by the Ministry of Human Resource Development, Department of Education to the Education Secretaries of all the States, UTs and it was clearly mentioned therein that the adoption of the scheme was voluntary and the only result follow from the State Government not adopting the scheme might be that the State Government may not get the benefit of the offer of reimbursement from the Central Government to the extent of 80% of the additional expenditure involved in giving effect to the revision of pay-scales as recommended by the scheme. Therefore, the factual situation was almost identical as in the present case. This Court approved specifically a paragraph in the Kerala High Court judgment which we have already quoted earlier in this judgment in para 5. In that the Kerala High Court had specifically rejected the contention that the State Government having accepted the UGC Scheme and as the scheme provided for the higher age of 60 years, the clause of the scheme regarding age of retirement also would become applicable. The Kerala High Court had specifically further observed that the UGC scheme did not become applicable as it was not obligatory for the Government and the Universities to follow the same. The Kerala High Court read a discretion in the State Government to accept or not the accept the scheme.

13. The situation is no different in the present case also. The very language of the letter dated 27.7.1998 suggests that the scheme is voluntary and not binding at all. Further it is specified in the judgment of the Kerala High Court that the teachers had no right to claim a specific age because it suggested in the scheme which scheme was itself voluntary and not binding. The Court clearly observed that "the appellant cannot claim that major portion of the scheme having been accepted by the Government,

> they have no right not to accept the clause relating to fixation of higher age of superannuation". The Court therein observed that it is a matter between the State Government on the one hand and the University Grants Commission on the other and it would be for the University Grants Commission to extend the benefit of the scheme or not to extend the same depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the scheme. It was lastly clearly observed that as long as the State Government has not accepted the UGC's recommendations to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they were entitled to retire on attaining the age of 60 years.
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> 14. Inspite of our best efforts, we have not been able to follow as to how the judgment of the Kerala High Court, which has been approved by this Court is, in any manner, different from the factual situation that prevails herein this case. It is for that reason that we have extensively quoted not only the aforementioned letter dated 27.7.1998 but also the subsequent letters and the further policy statement. Plain reading of all these is clear enough to suggest that the scheme was voluntary and it was upto the State Governments to accept or not to accept the scheme. Again even if the State Government accepted a part of the scheme, it was not necessary that all the scheme as it was, had to be accepted by the State Government. In fact the subsequent developments suggest that the State Government has not chosen to accept the scheme in full inasmuch as it has not accepted the suggestions on the part of the UGC to increase the age of superannuation."

13. In our opinion, the observations of the Supreme

Court quoted above are complete answer to the submissions made on behalf of the petitioners in this case. The competence of the State Government to prescribe age of retirement different from the one which is recommended in the package scheme has been accepted by the Supreme Court and therefore, challenge to the Government Resolution dated 11th December, 1999 prescribing the 60 years as the age of retirement for the petitioner has to fail. So far as the reliance placed on a judgment of the Supreme Court in the case of **Association of Maharashtra Education Service** (supra) is concerned, perusal of that judgment shows that there was no dispute before the Court that the teachers involved in that case were entitled to the scale prescribed by the UGC. The case of the State Government was that for being entitled to that pay scale, they will have to present themselves for selection before the Public Service Commission. The Supreme Court found that the State Government was insisting on the teachers who were claiming revised scales recommended by the UGC, were required to appear before the Public Service Commission because those were the scales payable to Class II and

Class III Government servants. The Government was assuming that application of the pay scales to teachers results in promotion and therefore, consultation with Public Service Commission is necessary. The Supreme Court found that the stand of the State Government was based on misunderstanding in the scheme initiated by the UGC. The Supreme Court in para 8 has observed thus :-

> "The contention that Lecturers in Class II of the Maharashtra Educational Service must present themselves for selection before the public Service Commission was introduced apparently on a misunderstanding of the Scheme initiated by the University Grants Commission. That Scheme envisages no promotion of Lecturers from one Class to another. It concerns itself with the revision of pay-scales of the Collegiate teachers and its object was to raise the salary-structure as one of the basic essentials for improvement of educational standards. The letter of the Government of India to the State Government, dated April 7, 1966 shows that the subject matter of the correspondence was "Improvement of Salary Scales of College and University teachers" and that the Government of India had accepted the recommendations of the University Grants Commission for (a) "revision of the salary scales" of collegiate teachers with effect from April 1, 1966. The Government of Maharashtra misunderstood the Scheme as requiring the promotion of Class II teachers to Class 1 and since under its Rules such a promotion could not be granted without consultation with the Public Service Commission, it asked respondents 2 to 11 to offer themselves

> for selection by that Commission. The imposition of such a condition being based on a misunderstanding of the Scheme proposed by the University Grants Commission, the High Court was right in directing the Government to place respondents 2 to 11 in the pay-scale of 700-1100 without asking them to appear before the Public Service Commission. As stated by the High Court whether respondents 2 to 11 should, as a consequence of the upgrading of their pay-scale, be placed in Class I Educational Service and whether they are entitled to the other benefits available to Class I officers is an entirely separate matter which the State Government will be at liberty to decide in accordance with the relevant rules and procedure."

14. It is thus clear that the judgment of the Supreme Court in the case of **Association of Maharashtra Education Service Class II Officers (supra)** is not relevant for deciding the controversy that arises for consideration in this case. What is pertinent is the Supreme Court in para 1 of that judgment has observed thus :

> "It is open to grave doubt whether the recommendations of a body like the University Grants Commission, can give rise to rights and obligations enforceable in a court of law but of that we shall say nothing as everyone concerned approached the questions on the assumption that the petition raised a justiciable issue."

15. Thus in that judgment, the Supreme Court expressed grave doubt whether merely recommendations of the UGC gives rise to a justiciable right. The Supreme Court in its subsequent judgment referred to above in the cases of **T.P. George and B. Bharat Kumar** referred to above has answered that question by holding that mere recommendations of the UGC do not give rise to any right. The Supreme Court in the judgment in the case of **T.P. George** has categorically held that the Government is free to fix different age of superannuation than the one recommended by the UGC. If the State Government fixes a different age of retirement than the one recommended by the UGC, that is the matter between the State Government on the one hand and the UGC on the other. The Supreme Court has with approval quoted the following observations from the judgment of Kerala High Court in para 3 of the judgment in **T.P. George** case.

> "xxxxxxxxxxx The appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation. That is a matter between the State Government on the one hand and the University Grants Commission on the other, which was provided certain benefits by the scheme. It

> is for the University Grants Commission to extend the benefit of the scheme or not to extend the benefit of the scheme, depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other. Teachers of the private institution concerned are governed by the statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years."

16. It is thus clear that the Supreme Court has in terms held that unless the State Government accepts the recommendation of the UGC and prescribes a different age of retirement than the one which is provided in the statute framed by various Universities, the age of retirement of the teachers will continue to be governed by the statutes framed by various Universities.

17. In so far as the present petitions are concerned, though the petitioners in their petitions have claimed that they are entitled to continue in service till the age of 62 years because of the

recommendation of the UGC, they have nowhere in the petition stated as to what was the age of retirement applicable to them under the statutes framed by various Universities before the UGC recommended the age of superannuation as 62 years and the State Government by Resolution dated 11th December, 1999 fixed the age of retirement as 60 years. Perusal of Section 115 of the Maharashtra Universities Act shows that by that Act, Bombay University Act, 1974, Pune University Act, 1974 and the Shivaji University Act, 1974 among other Acts have been repealed. Perusal of subsection 2(XII) of Section 115 shows that all statutes and ordinances made under the Acts which are repealed by the Maharashtra Universities Act in respect of any existing University shall continue to be in force to the extent that they are not inconsistent with the provisions of the Act till a different provision is made under the Maharashtra Universities Act. Thus, till the Government issued a Resolution dated 11th December, 1999, the statutes framed by various Universities prescribing the age of retirement continued in force. Perusal of the provisions of Section 43 of the Bombay University Act,

Pune University Act as also Shivaji University Act shows that it is one of the conditions of grant of affiliation to the University that the conditions of service of the teachers working in affiliated colleges shall be governed by the statutes framed by the University. So far as Pune University is concerned, we have been informed by the learned Counsel for the petitioner that the age of retirement laid down by the statutes framed by the Pune University is also 60 years. Thus, before the Government Resolution dated 11th December, 1999 was issued, the age of retirement of the petitioner teachers was 60 years. As pointed out above, the Supreme Court has approved the observations made in the judgment of the Kerala High Court that the age of retirement of the teachers will continue to be governed by the statutes unless the State Government by issuing the Government Resolution prescribes the age of retirement. Thus, looking at the matter from any point of view, no exception can be taken to the action of the respondent of retiring the petitioners at the age of 60 years. We, thus, find no substance in any of these petitions. All the petitions fail and are dismissed.

18. In some of the petitions, there were interim orders made by the Division Bench of this Court in favour of teachers and because of that interim orders, they are continued in service though they have reached the age of superannuation which is 60 years. As a result of this judgment, it goes without saying that interim orders stand vacated and no longer continue. But so far as the period during which, because of the interim orders passed by this Court, the petitioner teachers have actually worked, they will be entitled to be paid and the managements which are getting grant-in-aid from the State Government, would also entitle to claim grant for making payment of salary to the petitioner teachers for the period during which they worked under the interim orders passed by this Court.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)